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TITLE 10--ARMED FORCES

Subtitle A--General Military Law

PART IV--SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 139--RESEARCH AND DEVELOPMENT

Sec. 2358. Research and development projects

(a) Authority.--The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that--

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either--

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) Authorized Means.--The Secretary of Defense or the Secretary of a military department may perform research and development projects--

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

(c) Requirement of Potential Department of Defense Interest.--Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) Additional Provisions Applicable to Cooperative Agreements.--Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 2371 and 2371a of this title.

(Added Pub. L. 87-651, title II, Sec. 208(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 97-86, title IX, Sec. 910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100-370, Sec. 1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103-160, div. A, title VIII, Sec. 827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103-355, title I, Sec. 1301(a), Oct. 13, 1994, 108 Stat. 3284; Pub. L. 104-201, div. A, title II, Sec. 267(c)(2), Sept. 23, 1996, 110 Stat. 2468.)

Historical and Revision Notes  
1962 Act

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Revised section  
Source (Statutes at Large)

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Source (U.S. Code)

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2358..... 5:171c(b)(2), (3).  
July 26, 1947, ch. 343, Sec.

203(b)(2), (3); added Aug. 6,

1958, Pub. L. 85-599, Sec. 9(a)

(3d and 4th pars.), 72 Stat. 520.  
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5 U.S.C. 171c(b)(3) is omitted as unnecessary since the  
authorization for appropriations is implied in 5 U.S.C. 171c(b)(2).

#### 1988 Act

In the existing text of 10 U.S.C. 2358, the bill would in two  
instances strike the phrase ``or his designee'' appearing after  
``Secretary of Defense'' (section 1(g)(3)). The change is made for  
consistency in the Code, and no substantive change is intended. The  
committee notes that the Secretary of Defense has general authority to  
delegate functions under 10 U.S.C. 113(d).

Subsection (b) is based on Pub. L. 91-441, title II, Sec. 204, Oct.  
7, 1970, 84 Stat. 908.

#### Amendments

1996--Subsec. (d). Pub. L. 104-201 substituted ``sections 2371 and  
2371a'' for ``section 2371''.

1994--Pub. L. 103-355 amended section generally, inserting reference  
to development projects in section catchline, and in text specifying  
that relevant Secretary may perform research and development projects in  
accordance with chapter 63 of title 31, and adding subsec. (d) relating  
to additional provisions applicable to cooperative agreements.

1993--Pub. L. 103-160 amended section generally. Prior to amendment,  
section read as follows:

``(a) In General.--Subject to approval by the President, the  
Secretary of Defense may engage in basic and applied research projects  
that are necessary to the responsibilities of the Department of Defense  
in the field of basic and applied research and development and that  
relate to weapons systems and other military needs. Subject to approval  
by the President, the Secretary may perform assigned research and  
development projects--

``(1) by contract with, or by grant to, educational or research  
institutions, private businesses, or other agencies of the United  
States;

``(2) through one or more of the military departments; or

``(3) by using employees and consultants of the Department of  
Defense.

``(b) Requirement of Potential Military Relationship.--Funds  
appropriated to the Department of Defense may not be used to finance any  
research project or study unless the project or study has, in the  
opinion of the Secretary of Defense, a potential relationship to a  
military function or operation.''

1988--Pub. L. 100-370 designated existing provisions as subsec. (a),  
inserted heading, struck out ``or his designee'' after ``Secretary of  
Defense'' and ``President, the Secretary'', and added subsec. (b).

1981--Par. (1). Pub. L. 97-86 substituted ``by contract with, or by  
grant to,''' for ``by contract with''.

Effective Date of 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

Pilot Programs for Revitalizing Laboratories and Test and Evaluation Centers of Department of Defense

Pub. L. 106-65, div. A, title II, Sec. 245, Oct. 5, 1999, 113 Stat. 552, provided that:

“(a) Authority.--(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense. The pilot program under this section is in addition to, but may be carried out in conjunction with, the pilot program authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 1955; 10 U.S.C. 2358 note).

“(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

“(A) To ensure that the laboratories selected can attract a workforce appropriately balanced between permanent and temporary personnel and among workers with an appropriate level of skills and experience and that those laboratories can effectively compete in hiring to obtain the finest scientific talent.

“(B) To develop or expand innovative methods of operation that provide more defense research for each dollar of cost, including carrying out initiatives such as focusing on the performance of core functions and adopting more business-like practices.

“(C) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A) and (B).

“(3) In selecting the laboratories for participation in the pilot program, the Secretary shall consider laboratories where innovative management techniques have been demonstrated, particularly as documented under sections 1115 through 1119 of title 31, United States Code, relating to Government agency performance and results.

“(4) The Secretary may carry out the pilot program at each selected laboratory for a period of three years beginning not later than March 1, 2000.

“(b) Reports.--(1) Not later than March 1, 2000, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program. The report shall include the following:

“(A) Each laboratory selected for the pilot program.

“(B) To the extent possible, a description of the innovative concepts that are to be tested at each laboratory.

“(C) The criteria to be used for measuring the success of each concept to be tested.

“(2) Promptly after the expiration of the period for participation of a laboratory in the pilot program, the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

“(A) A description of the concepts tested.

“(B) The results of the testing.

“(C) The lessons learned.

“(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.”

Pub. L. 105-261, div. A, title II, Sec. 246, Oct. 17, 1998, 112 Stat. 1955, provided that:

``(a) Pilot Program.--(1) The Secretary of Defense may carry out a pilot program to demonstrate improved cooperative relationships with universities and other private sector entities for the performance of research and development functions.

``(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation center, of each military department with authority for the following:

``(A) To explore innovative methods for quickly, efficiently, and fairly entering into cooperative relationships with universities and other private sector entities with respect to the performance of research and development functions.

``(B) To waive any restrictions on the demonstration and implementation of such methods that are not required by law.

``(C) To develop or expand innovative methods of operation that provide more defense research for each dollar of cost, including to carry out such initiatives as focusing on the performance of core functions and adopting more business-like practices.

``(3) In selecting the laboratories and centers for participation in the pilot program, the Secretary shall consider laboratories and centers where innovative management techniques have been demonstrated, particularly as documented under sections 1115 through 1119 of title 31, United States Code, relating to Government agency performance and results.

``(4) The Secretary may carry out the pilot program at each selected laboratory and center for a period of three years beginning not later than March 1, 1999.

``(b) Reports.--(1) Not later than March 1, 1999, the Secretary of Defense shall submit a report on the implementation of the pilot program to Congress. The report shall include the following:

``(A) Each laboratory and center selected for the pilot program.

``(B) To the extent possible, a description of the innovative concepts that are to be tested at each laboratory or center.

``(C) The criteria to be used for measuring the success of each concept to be tested.

``(2) Promptly after the expiration of the period for participation of a laboratory or center in the pilot program, the Secretary of Defense shall submit to Congress a final report on the participation of the laboratory or center in the pilot program. The report shall contain the following:

``(A) A description of the concepts tested.

``(B) The results of the testing.

``(C) The lessons learned.

``(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at the laboratory or center under the pilot program.

``(c) Commendation.--Congress commends the Secretary of Defense for the progress made by the science and technology laboratories and test and evaluation centers of the Department of Defense and encourages the Secretary to take the actions necessary to ensure continued progress for the laboratories and test and evaluation centers in developing cooperative relationships with universities and other private sector entities for the performance of research and development functions.''

#### Defense Experimental Program To Stimulate Competitive Research

Pub. L. 105-18, title I, Sec. 307, June 12, 1997, 111 Stat. 169, provided that: ``For the purposes of implementing the 1997 Defense Experimental Program to Stimulate Competitive Research (DEPSCoR), the term `State' means a State of the United States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States, American Samoa and the Commonwealth of the Northern Mariana Islands.''

Pub. L. 103-337, div. A, title II, Sec. 257, Oct. 5, 1994, 108 Stat.

2705, as amended by Pub. L. 104-106, div. A, title II, Sec. 273, Feb. 10, 1996, 110 Stat. 239; Pub. L. 104-201, div. A, title II, Sec. 264, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 105-85, div. A, title II, Sec. 243, Nov. 18, 1997, 111 Stat. 1667; Pub. L. 106-65, div. A, title IX, Sec. 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

``(a) Program Required.--The Secretary of Defense, acting through the Director of Defense Research and Engineering, shall carry out a Defense Experimental Program to Stimulate Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

``(b) Program Objectives.--The objectives of the program are as follows:

``(1) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is competitive under the peer-review systems used for awarding Federal research assistance.

``(2) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

``(c) Program Activities.--In order to achieve the program objectives, the following activities are authorized under the program:

``(1) Competitive award of research grants.

``(2) Competitive award of financial assistance for graduate students.

``(d) Eligible States.--(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate which States are eligible States for the purposes of this section.

``(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate a State as an eligible State if, as determined by the Under Secretary--

``(A) the average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the State for the three fiscal years preceding the fiscal year for which the designation is effective or for the last three fiscal years for which statistics are available is less than the amount determined by multiplying 60 percent times the amount equal to  $\frac{1}{50}$  of the total average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the United States for such three preceding or last fiscal years, as the case may be; and

``(B) the State has demonstrated a commitment to developing research bases in the State and to improving science and engineering research and education programs at institutions of higher education in the State.

``(e) Coordination With Similar Federal Programs.--(1) The Secretary shall consult with the Director of the National Science Foundation and the Director of the Office of Science and Technology Policy in the planning, development, and execution of the program and shall coordinate the program with the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation and with similar programs sponsored by other departments and agencies of the Federal Government.

``(2) All solicitations under the Defense Experimental Program to Stimulate Competitive Research shall be made to, and all awards shall be made through, the State committees established for purposes of the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation.

``(3) A State committee referred to in paragraph (2) shall ensure that activities carried out in the State of that committee under the Defense Experimental Program to Stimulate Competitive Research are coordinated with the activities carried out in the State under other similar initiatives of the Federal Government to stimulate competitive

research.

``(f) State Defined.--In this section, the term `State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''

#### Inclusion of Women and Minorities in Clinical Research Projects

Section 252 of Pub. L. 103-160 provided that:

``(a) General Rule.--In conducting or supporting clinical research, the Secretary of Defense shall ensure that--

``(1) women who are members of the Armed Forces are included as subjects in each project of such research; and

``(2) members of minority groups who are members of the Armed Forces are included as subjects of such research.

``(b) Waiver Authority.--The requirement in subsection (a) regarding women and members of minority groups who are members of the Armed Forces may be waived by the Secretary of Defense with respect to a project of clinical research if the Secretary determines that the inclusion, as subjects in the project, of women and members of minority groups, respectively--

``(1) is inappropriate with respect to the health of the subjects;

``(2) is inappropriate with respect to the purpose of the research; or

``(3) is inappropriate under such other circumstances as the Secretary of Defense may designate.

``(c) Requirement for Analysis of Research.--In the case of a project of clinical research in which women or members of minority groups will under subsection (a) be included as subjects of the research, the Secretary of Defense shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.''

#### University Research Initiative Support Program

Section 802 of Pub. L. 103-160, as amended by Pub. L. 104-106, div. A, title II, Sec. 275, Feb. 10, 1996, 110 Stat. 241; Pub. L. 104-201, div. A, title II, Sec. 263, Sept. 23, 1996, 110 Stat. 2465, provided that:

``(a) Establishment.--The Secretary of Defense, through the Director of Defense Research and Engineering, may establish a University Research Initiative Support Program.

``(b) Purpose.--Under the program, the Director may award grants and contracts to eligible institutions of higher education to support the conduct of research and development relevant to requirements of the Department of Defense.

``(c) Eligibility.--An institution of higher education is eligible for a grant or contract under the program if the institution has received less than a total of \$2,000,000 in grants and contracts from the Department of Defense in the two most recent fiscal years for which complete statistics are available when proposals are requested for such grant or contract.

``(d) Competition Required.--The Director shall use competitive procedures in awarding grants and contracts under the program.

``(e) Selection Process.--In awarding grants and contracts under the program, the Director shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code.

``(f) Regulations.--Not later than 90 days after the date of the

enactment of this Act [Nov. 30, 1993], the Director shall prescribe regulations for carrying out the program.  
``(g) Funding.--Of the amounts authorized to be appropriated under section 201 [107 Stat. 1583], \$20,000,000 shall be available for the University Research Initiative Support Program.''

Independent Research and Development; Bid and Proposal Costs;  
Negotiation of Advance Agreements With Contractors; Annual Report to  
Congress

Pub. L. 91-441, title II, Sec. 203, Oct. 7, 1970, 84 Stat. 906, as amended by Pub. L. 96-342, title II, Sec. 208, Sept. 8, 1980, 94 Stat. 1081, provided that no funds authorized to be appropriated to Department of Defense by this or any other Act were to be used to finance independent research and development or bid and proposal costs unless such work had, in opinion of Secretary of Defense, potential relationship to military functions or operations, and advance agreements regarding payment for such work had been negotiated, prior to repeal by Pub. L. 101-510, div. A, title VIII, Sec. 824(b), Nov. 5, 1990, 104 Stat. 1604. See section 2372 of this title.

Relationship of Research Projects or Studies to Military Function or  
Operation

Pub. L. 91-441, title II, Sec. 204, Oct. 7, 1970, 84 Stat. 908, which provided that no funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation, was repealed and restated in subsec. (b) of this section by Pub. L. 100-370, Sec. 1(g)(3)(C), (5), July 19, 1988, 102 Stat. 847.

Herbicides and Defoliation Program; Comprehensive Study and  
Investigation; Report by January 31, 1972; Transmittal to President and  
Congress by March 1, 1972

Pub. L. 91-441, title V, Sec. 506(c), Oct. 7, 1970, 84 Stat. 913, directed Secretary of Defense to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) ecological and physiological dangers inherent in use of herbicides, and (B) ecological and physiological effects of defoliation program carried out by Department of Defense in South Vietnam, with a report on the study to be transmitted to President and Congress by Mar. 1, 1972.

Campuses Barring Military Recruiters; Cessation of Payments;  
Notification of Secretary of Defense

Pub. L. 92-436, title VI, Sec. 606, Sept. 29, 1972, 86 Stat. 740, provided that:

``(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the

reasons why such course of instruction is of vital importance to the security of the United States.

``(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

``(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 92-156, title V, Sec. 502, Nov. 17, 1971, 85 Stat. 427.

Pub. L. 91-441, title V, Sec. 510, Oct. 7, 1970, 84 Stat. 914.

Federal Contract Research Centers; Officers' Compensation; Notification to Congress

Pub. L. 91-121, title IV, Sec. 407, Nov. 19, 1969, 83 Stat. 208, related to restrictions on use of appropriations for compensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, prior to repeal by Pub. L. 96-107, title VIII, Sec. 819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

#### Section Referred to in Other Sections

This section is referred to in section 2371 of this title.